

**SUMMARIZED MINUTES
SCOTTSDALE CITY COUNCIL
GENERAL PLAN AMENDMENT MEETING
MONDAY, OCTOBER 24, 2005**



**CITY HALL KIVA
3939 N. DRINKWATER BOULEVARD
SCOTTSDALE, AZ 85251**

CALL TO ORDER

Mayor Manross called to order a General Plan Amendment Meeting of the Scottsdale City Council on Monday, October 24, 2005 in the Kiva, City Hall, at 5:05 P.M.

ROLL CALL

Present: Mayor Mary Manross
Vice Mayor Ron McCullagh
Council Members Betty Drake, Wayne Ecton, W.J. "Jim" Lane,
Robert Littlefield, and Kevin Osterman

Also Present: City Manager Jan Dolan
Acting City Attorney Deborah Robberson
City Clerk Carolyn Jagger

PUBLIC COMMENT

Leon Spiro, 7814 E Oberlin Wy, 85262, said it was time the Council made a final determination regarding construction on GLO patented easements. Mr. Spiro requested that an appellate court case opinion on the subject be placed in the record (attached).

Sam West, 8160 N Hayden, 85258, representing the applicant of Item 5, Windmill Pass General Plan Amendment, 11-GP-2005, withdrew their request.

NOTE IN ACCORDANCE WITH PROVISIONS OF THE ARIZONA REVISED STATUTES THE SUMMARIZED MINUTES OF CITY COUNCIL MEETINGS ARE NOT VERBATIM TRANSCRIPTS. ONLY THE ACTIONS TAKEN AND DISCUSSION APPEARING WITH QUOTATION MARKS ARE VERBATIM. DIGITAL RECORDINGS OF CITY COUNCIL MEETINGS ARE ON FILE IN THE CITY CLERK'S OFFICE.

REGULAR AGENDA

ITEMS 1 - 6

Councilmember Drake declared a conflict of interest (A.R.S. 38-501), and left the dais for Agenda Item Number 1.

1. Camberlango Properties, Inc. General Plan Amendment and Rezoning Requests:

1. Consider a Major General Plan Amendment of the Land Use Element from Employment to Mixed-Use Neighborhoods on a 28.61 +/- acre parcel located at 15101 N. Scottsdale Road (northeast corner of Scottsdale Road and Butherus Drive).
2. Consider rezoning from Industrial Park District (I-1) to Planned Regional Center (PRC) on a 28.61 +/-acre parcel located at 15101 N. Scottsdale Road (northeast corner of Scottsdale Road and Butherus Drive).
3. Adopt Resolution No. 6763 affirming the General Plan Amendment.
4. Adopt Ordinance No. 3648 affirming the rezoning.

Location: 15101 N. Scottsdale Road

Reference: 5-GP-2005 and 14-ZN-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

Staff provided an overview of the request and reviewed the proposed site plan, which includes a hotel, residential lofts and condominiums, as well as commercial and office space. Staff reported that a potential drainage concern regarding underground storage had been identified and addressed.

Applicant Presentation:

- Expected to generate over \$12M in tax revenue in the first year
- 1% of the project valuation will be donated to public art
- Overwhelming project support

Mayor Manross opened public testimony:

Robert Jackson, AIS Properties, 14901 N Scottsdale Rd, 85254, congratulated the City on this major proposal. Mr. Jackson's concern regarding the project includes traffic, impacts to neighboring industrial properties, the phasing of the project, drainage issues, and parking.

Scott Lyon, 7305 E Greenway Rd, 85260, stated his office is the closest to the project site and would be the most heavily impacted. Mr. Lyon said he had carefully reviewed the plans and is very supportive.

Mayor Manross closed public testimony.

Applicant Response:

- Staff is addressing traffic impacts.
- The first phase of building will include the hotel and retail and office space.
- The majority of parking would be underground.
- Build-out will take place in approximately four years.

Council discussion:

- Council agreed the project is well suited to the site.
- The project is compatible with the airport, and will be a positive amenity for the community.
- A recommendation was made to have more commercial, rather than industrial, uses on Scottsdale Road.
- It was suggested that the Development Review Board pay close attention to pedestrian circulation features in the project, perhaps including a pedestrian bridge.

MOTION AND VOTE – ITEM 1

COUNCILMAN ECTON MOVED TO APPROVE THE MAJOR GENERAL PLAN AMENDMENT OF THE LAND USE ELEMENT FROM EMPLOYMENT TO MIXED USE NEIGHBORHOODS (5-GP-2005), REZONING FROM INDUSTRIAL PARK DISTRICT TO PLANNED REGIONAL CENTER (14-ZN-2005), AND ADOPT RESOLUTION NO. 6763 AND ORDINANCE NO. 3648. COUNCILMAN OSTERMAN SECONDED THE MOTION, WHICH CARRIED 6-0, WITH COUNCILMEMBER DRAKE ABSTAINING.

2. Silverstone General Plan Amendment

Requests:

1. Consider a Major General Plan Amendment of the Land Use Element from Cultural/Institutional or Public Use to Mixed Use Neighborhoods on 160 +/- acres located at the southeast corner of Pinnacle Peak and Scottsdale roads.
2. Adopt Resolution No. 6764 affirming the General Plan Amendment.

Location: Southeast corner of Pinnacle Peak and Scottsdale roads

Reference: 7-GP-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

Staff reviewed the application and the proposed uses of the site:

- The property is the former site of Rawhide.
- Land uses would include 25 acres of commercial property, 97 acres of residential property, 4.5 acres for municipal use, 13 acres for Rawhide Wash/Park site, and 20.5 acres for streets.
- The developer will pay for street, drainage, and sewage infrastructure.
- Roadway improvements for Pinnacle Peak Road, Miller Road, and Williams Road would be concurrent with the site development, along with installation of new traffic signals at Scottsdale/Williams and Miller/Williams.

The applicant stated this hearing was only to amend the General Plan, not to approve a specific site plan or zoning case, and provided the following information:

- Substantial impacts have taken place on this property including blading, fireworks, noise, dust, odors, and traffic.
- The property does not fall under ESLO.
- The wash will be 300 feet wide and will be a substantial amenity to the community.
- Many pedestrian connections will join the mixed uses of the site.
- Comparison was made to the Stacked 40s Development. The project will have:
 - 83% less building area
 - 24% fewer units per acre
 - 64% fewer trips generated
 - 22 acres of NAOS (as opposed to none for the Stacked 40s)
- Public art will be incorporated into the plan, and a 100-foot scenic corridor will be re-vegetated.

Mayor Manross opened public testimony:

Andrew Mutch, representing Desierto Vida HOA, 23605 N 80th Wy, 85255, said the Association was not opposed to the General Plan Amendment, although he presented a petition with suggested stipulations for development of the property. Mr. Mutch said the Association's primary concerns were an increase in population, housing density, widening of Pinnacle Peak Road, and ESLO requirements.

Leonard Huck, of Hyatt Classic Residence, 7501 E Thompson Peak Pkwy, 85255, spoke in support of the project, and commented on the benefits of this type of residential development for senior citizens.

Patsy Davidson, of Hyatt Classic Residence, 7501 E Thompson Peak Pkwy, 85255, believes more intergenerational residences are needed in Scottsdale. Ms. Davidson also noted there are about three hundred people on the waiting list for the Classic development.

Kenneth Steuer, 24101 N 76th Pl, 85255, said that the site plan could be better and the developer should make more concessions. He expressed concern about density and property values of the surrounding areas.

Howard Myers, Desert Property Owners' Association, 6631 E Horned Owl Tr, 85262, said he did not oppose the General Plan amendment, but feels the category of Mixed Use Neighborhoods is too intense for the area. He believes the area is generally Suburban Neighborhood, and the use should not be more intense than it was with Rawhide. He strongly supported having stipulations included in the project's zoning case.

Judy Weller, 23003 N 77th Wy, 85255, stated her home is closest to the project, and expressed her gratitude to the developer for their diligence in providing information. Ms. Weller was not opposed to the project, but hopes traffic issues will be monitored.

Bob Vairo, Coalition of Pinnacle Peak (COPP) 10040 E Happy Valley Rd, #451, 85255, said the Coalition was not opposed to the General Plan Amendment, but asked that the applicant consider changing the zoning to C-2 rather than Mixed Use. Mr. Vairo said the C-2 designation would be closer to what is being planned and would eliminate concern regarding more intense

use in the future. He is pleased that the developer has provided assurances that the project will be phased-in following the road improvements.

Mayor Manross closed public testimony.

Council discussion:

- Acting City Attorney Deborah Robberson stated that the category for Major General Plan Amendments could not be changed tonight. Any change would require re-notification, and the hearing would have to be postponed to next year.
- Clarification was given to Council that stipulations could not be placed on a General Plan Amendment, but would go on the zoning case.
- It was noted the zoning application has been filed for the property. The site plan is scheduled for the November 9, 2005 Planning Commission meeting, and the December 6, 2005 Council meeting. (*City Clerk note: The December 6, 2005 meeting was rescheduled to December 12, 2005.*)
- Councilmembers were pleased that the project will be master-planned, intergenerational, and includes re-vegetation.
- Councilmembers urged sensitivity in dealing with density and traffic in the site plan, and that the 100-foot scenic corridor be planned in a timely manner.
- Councilmembers appreciated the generous donation of land for municipal use and the funds for public art.

MOTION AND VOTE – ITEM 2

COUNCILMEMBER DRAKE MOVED TO APPROVE THE MAJOR GENERAL PLAN AMENDMENT OF THE LAND USE ELEMENT FROM CULTURAL/INSTITUTIONAL OR PUBLIC USE TO MIXED USE NEIGHBORHOODS (7-GP-2005), AND ADOPT RESOLUTION NO. 6764 WITH THE EXPECTATION THAT WHEN THE ZONING CASE COMES FORWARD, COUNCIL WILL SEE THE SAME INTENSITY OF USE DISCUSSED TONIGHT. COUNCILMAN ECTON SECONDED THE MOTION, WHICH CARRIED 7-0.

3. Parcel M and O At Troon General Plan Amendment and Rezoning Requests:

1. Consider a Major General Plan Amendment of the Land Use Element from Office to Suburban Neighborhoods on a 9.5 +/- acre parcel located at 28000 N. Alma School Parkway.
2. Consider rezoning from Commercial Office, Environmentally Sensitive Lands, Hillside District (C-O ESL HD/HC) to Single Family Residential District, Environmentally Sensitive Lands (R1-7 ESL) on a 9.5 +/- acre parcel located at 28000 N. Alma School Parkway.
3. Adopt Resolution No. 6765 affirming the General Plan Amendment.
4. Adopt Ordinance No. 3649 affirming the rezoning.

Location: 28000 N. Alma School Parkway

Reference: 8-GP-2005 and 17-ZN-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

The staff and applicant clarified that the request is to lower the zoning for this in-fill parcel, and that setbacks would meet or exceed anything existing in the area.

No public comment cards were received for this item.

MOTION AND VOTE – ITEM 3

COUNCILMAN OSTERMAN MOVED TO APPROVE THE MAJOR GENERAL PLAN AMENDMENT OF THE LAND USE ELEMENT FROM OFFICE TO SUBURBAN NEIGHBORHOODS (8-GP-2005), REZONING FROM COMMERCIAL OFFICE, ENVIRONMENTALLY SENSITIVE LANDS, HILLSIDE DISTRICT, TO SINGLE FAMILY RESIDENTIAL DISTRICT, ENVIRONMENTALLY SENSITIVE LANDS (17-ZN-2005), AND ADOPT RESOLUTION NO. 6765 AND ORDINANCE NO. 3649. COUNCILMAN ECTON SECONDED THE MOTION, WHICH CARRIED 7-0.

4. Equestria Villas General Plan Amendment

Requests:

1. Consider a major General Plan Amendment of the Land Use Element from Cultural/Institutional or Public Use to Urban Neighborhoods on a 4 +/- acre parcel located on the south side of McDowell Mountain Ranch Road, 1/4 mile west of Thompson Peak Parkway (9975 E. McDowell Mountain Ranch Road).
2. Adopt Resolution No. 6766 affirming the General Plan Amendment.

Location: 9975 E. McDowell Mountain Ranch Road

Reference: 10-GP-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

A staff presentation was provided as follows:

Proposal:

- Amend the General Plan from Cultural Institutional and Public Use to Urban Neighborhoods
- Four-acre property, adjoining 12-acre Winstar Pro site
- Surrounding General Plan categories include Commercial, Urban/Suburban Neighborhoods, Cultural Institutional

Key Issues:

- Proximity to WestWorld may create impacts relating to views, noise, lighting, odors, and public events
- Verde Canal will be considered and preserved in the development
- Access to McDowell Mountain Ranch to the north
- McDowell Mountain Ranch and Horseman's Park communities require compatible Land Uses
- Notice to future purchasers provided in CC&Rs regarding WestWorld's proximity and possible impact

Traffic:

- TIMA prepared for this case and found capacity exists for traffic generated by the project

- McDowell Mountain Ranch Road is classified as a major collector, which has a capacity of 35,000 vehicles per day
- Current traffic level is approximately 4,600 vehicles per day
- Signalized intersection at Thompson Peak Parkway operates at acceptable levels
- An overall traffic access and circulation plan will be required with zoning review

The Planning Commission recommended denial of the General Plan amendment request on September 28, 2005 by a vote of 4-3. This was a reconsideration of the Commission's prior 6-1 vote to approve the case.

Council and staff discussion:

- The Planning Commission reconsidered and denied the case after reviewing an adjacent case (Winstar). They determined the nearness of WestWorld would create impacts to residential uses on the site.
- Acting City Attorney Deborah Robberson cautioned that a decision on the proposed General Plan Amendment should not include specific plans for the property.
- Service-Residential (S-R) was unacceptable to the applicant due to access issues and business viability. It is acceptable to neighbors and to WestWorld.
- The applicant agreed to stipulate to no more than twelve units per acre.

Mayor Manross opened public testimony:

Bob Vairo, Coalition of Pinnacle Peak (COPP), 10040 E Happy Valley Rd, #451, 85255, recommended denial of the request as it would be inappropriate for a high-density residential development to be in such close proximity to WestWorld. The Coalition preferred to see an application for Service-Residential, but that was rejected by the applicant. Mr. Vairo referenced a letter sent to Council on October 12, 2005, which outlined concerns that came to light after the Planning Commission hearing.

Leon Spiro, 7814 E Oberlin Wy, 85262, expressed his concern about GLO easements and urged the Council to get an opinion from the Arizona Attorney General on GLO Patent Roadway Easements.

Gerry Hrenchir, President-Horseman's Park HOA, 16195 N 99th Pl, 85260, opposed changing the General Plan on the property. The Association supports the designation of Service Residential, but not industrial, high-rise, or high-density. He urged that the canal be protected.

Laurie McCammon, McDowell Mountain Responsible Community Development Coalition, 11020 E Acoma Dr, 85255, recommended denial of the case as it does not conform to the agreement the developer entered into with the community in 2003. The Coalition supports the existing R1-35 zoning or a change to Service Residential.

Dave Gulino, Planning Commission, stated he was present to answer any questions Council might have about the Planning Commission's decision on the case.

Mayor Manross closed public testimony.

The applicant addressed the confusion that has arisen due to two adjacent, but unrelated cases. It was noted the parcel would be buffered from WestWorld and compatible with uses across the street.

Council discussion:

- The case is not related to the Winstar case and should be decided on its own merits.
- Staff clarified that the figure of eight to twelve units per acre is based on the gross lot area, and allows for preservation of the canal.
- Concern was expressed regarding disturbances from WestWorld such as noise, dust, and lights.
- Options for buffering, mitigating noise, and notification to buyers were discussed.
- Some Councilmembers expressed concern that all relevant information had not been presented to Council in a timely manner and additional time was requested to review the information.

MOTION AND VOTE – ITEM 4

COUNCILMAN LITTLEFIELD MOVED TO ADJOURN THE MEETING AND HEAR THE TWO REMAINING CASES TOMORROW EVENING. COUNCILMAN OSTERMAN SECONDED THE MOTION, WHICH FAILED 1-6, WITH MAYOR MANROSS, VICE MAYOR MCCULLAGH, AND COUNCILMEMBERS, DRAKE, ECTON, LANE, AND OSTERMAN DISSENTING.

COUNCILMAN OSTERMAN MOVED TO CONTINUE THE CASE TO TOMORROW EVENING. COUNCILMAN LITTLEFIELD SECONDED THE MOTION, WHICH CARRIED 4-3, WITH COUNCILMEMBERS DRAKE, LANE, AND MCCULLAGH DISSENTING.

ITEM NUMBER 5 WAS WITHDRAWN BY THE APPLICANT.

5. Windmill Pass General Plan Amendment

Requests:

1. Consider a major General Plan Amendment of the Land Use Element from Suburban Neighborhoods to Office on a 7.73+/- acre parcel located on the south side of Carefree Highway, west of Scottsdale Road (6839 E. Carefree Highway).
2. Adopt Resolution No. 6767 affirming the above General Plan Amendment.

Location: South side of Carefree Highway, west of Scottsdale Road

Reference: 11-GP-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

NO ACTION TAKEN ON ITEM NUMBER 5.

6. Winstar Pro General Plan Amendment

Requests:

1. A Major General Plan Amendment of the Land Use Element from Cultural/Institutional or Public Use to Urban Neighborhoods on a 12 +/- acre parcel located at the southeast corner of 99th Place and McDowell Mountain Ranch Road.
2. Adopt Resolution No. 6768 affirming the General Plan Amendment.

Location: Southeast corner of E. McDowell Mountain Ranch Road and 99th Place

Reference: 12-GP-2005

Staff Contact(s): Frank Gray, Planning and Development Services General Manager, 480-312-2890, fgray@scottsdaleaz.gov; Randy Grant, Chief Planning Officer, 480-312-7995, rgrant@scottsdaleaz.gov

A staff presentation was provided as follows:

Proposal:

- Amend the General Plan from Cultural Institutional and Public Use to Urban Neighborhoods
- Twelve-acre site, includes seven-acre state land property
- Surrounding General Plan categories include Commercial, Urban/Suburban Neighborhoods, and Cultural Institutional
- Adjacent General Plan case Equestria Villa

Key Issues

- Residential use is compatible with single and multi-family uses to north, but its proximity to WestWorld may create impacts relating to views, noise, lighting, odor, and public events
- Proximity to Verde Canal to be considered during the development process
- McDowell Mountain Ranch and Horseman's Park communities require compatible land uses
- One letter of opposition submitted by neighbors cited traffic and possible increased crime
- Traffic generation may be reasonably accommodated by adjoining streets

Traffic

- TIMA has been prepared for the proposal
- McDowell Mountain Ranch Road is classified as a major collector, which has a capacity of 35,000 vehicles per day
- The current traffic level is approximately 4,600 vehicles per day
- Signalized intersection at Thompson Peak Parkway operates at acceptable levels
- An overall traffic and circulation plan will be required as part of the zoning request for the site

Analysis

- Use is generally compatible with surrounding residential properties to the north and northeast
- Conforms to Horseman's Park East PCD and ESLO
- Proximity to WestWorld may create impacts relating to views, noise, lighting, odor, and public events
- Suggest possible notice to purchasers in CC&Rs of the site's proximity to WestWorld
- Verde Canal and multi-use trail
- Neighbors prefer residential use rather than commercial or industrial uses
- Objections included concern about traffic and crime

Planning Commission Recommendation

- The Planning Commission recommended denial of the General Plan amendment on September 28, 2005 by a vote of 6-1

Applicant presentation:

- Prefer to have northern access on McDowell Mountain Road and limited access on Thompson Peak Parkway, in consideration for a donation of two acres for a roadway to the aquatic center

- Will agree to stipulate to:
 - Twelve units per acre
 - Construction of an NAOS buffer on the WestWorld edge of the site
 - A requirement that buyers sign disclosures regarding WestWorld

Mayor Manross opened public testimony:

Bob Vairo, Coalition of Pinnacle Peak (COPP), 10040 E Happy Valley Rd, #451, 85255, referenced a letter he had faxed to the Mayor and City Council on October 12, 2005, after he had become privy to more information following the Planning Commission hearing. The Planning Commission recommended denial of the application due to its proximity to WestWorld, and the expected problems that a high-density residential use would have with tolerating noise, dust, and other potential impacts.

Leon Spiro, 7814 E Oberlin Wy, 85262, began to play a recording of testimony from a previous meeting. Mayor Manross reminded him this was not a GLO property, and requested he not speak to that issue.

Gerry Hrenchir, President-Horseman's Park HOA, 16195 N 99th Pl, 85260, believed it would be a mistake to change the General Plan designation at this time. Mr. Hrenchir suggested that the City acquire the property for use as a parking lot for WestWorld.

Laurie McCammon, McDowell Mountain Responsible Community Development, stated the request made in 12-GP-2005 was not what the neighborhood agreed to support in 2003.

Mayor Manross closed public testimony.

Council discussion:

- Staff said that access to Thompson Peak Parkway would be for emergency vehicles only. The applicant hoped to work with staff on a compromise of right-in and right-out access. Staff clarified that the road was not designed as an access road.
- Discussion was held regarding the possibility of separate action on the portion of the property currently owned by the State. Acting City Attorney Deborah Robberson said the application was for the whole parcel and the Council could not modify the request.
- Concern was expressed that intense residential use was not appropriate for the property. It was suggested that Service Residential would be a better fit.
- Taking into consideration the WestWorld Master Plan, and the fact that WestWorld is still under redevelopment, the time is not right to change the General Plan designation for the site.
- Councilman Lane said maintaining the current General Plan designation for the property makes it virtually useless. He also said if the property needs to be a parking lot for WestWorld, then it is incumbent on the City to purchase it.

MOTION AND VOTE – ITEM 6

COUNCILMAN OSTERMAN MOVED TO DENY THE MAJOR GENERAL PLAN AMENDMENT OF THE LAND USE ELEMENT FROM CULTURAL/INSTITUTIONAL OR PUBLIC USE TO URBAN NEIGHBORHOODS (12-GP-2005). COUNCILMEMBER DRAKE SECONDED THE MOTION, WHICH CARRIED 6-1, WITH COUNCILMAN LANE DISSENTING.

PUBLIC COMMENT - None

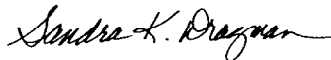
CITY MANAGER'S REPORT - None

MAYOR AND COUNCIL ITEMS - None

ADJOURNMENT

The meeting adjourned at 8:57 P.M. with business pending (10-GP-2005) for tomorrow evening, October 25, 2005.

SUBMITTED BY:



Sandy Dragman
Recording Secretary

REVIEWED BY:



Carolyn Jagger
City Clerk

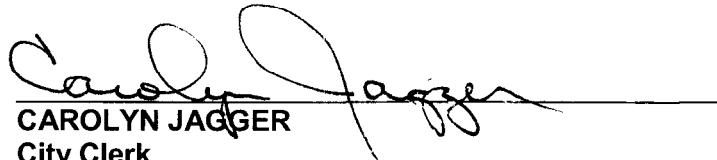
Officially approved by the City Council on November 15, 2005

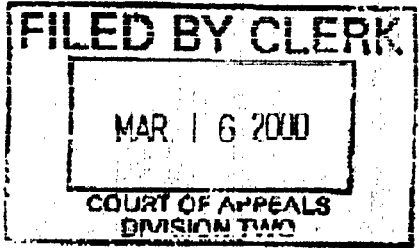
CERTIFICATE

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the General Plan Amendment Meeting of the City Council of Scottsdale, Arizona held on the 24th day of October 2005.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 15th day of November 2005.


CAROLYN JAGGER
City Clerk



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

ARTHUR S. BERNAL, a married man
dealing with his sole and separate property,

Plaintiff/Appellant,

v.

RONALD LOEKS and DONNA LOEKS,
husband and wife; GARY E. McCUSKER
and KERRY McCUSKER, husband and
wife,

Defendants/Appellees.

2 CA-CV 99-0107
DEPARTMENT B

OPINION

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV 98045814

Honorable Boyd T. Johnson, Judge

REVERSED AND REMANDED

Cruse, Firetag & Bock, P.C.
By Jules I. Firetag and Paul F. Dowdell

Phoenix
Attorneys for Plaintiff/Appellant

William F. Doran

Phoenix
Attorney for Defendants/Appellees

Mariscal, Weeks, McIntyre & Friedlander, P.A.
By Gary L. Birnbaum and Michael S. Rubin

Phoenix
Attorneys for Amicus Curiae Land Title
Association of Arizona

BRAMMER, Presiding Judge.

Arthur Bernal appeals from the trial court's order granting summary judgment in favor of the defendants/appellees Ronald and Donna Loeks and Gary and Kerry McCusker on his claim that they had unlawfully denied him access to rights-of-way that had been reserved on their properties in federal land patents.

Facts and Procedural History

We view the facts in the light most favorable to the party against whom summary judgment was entered. *United Bank of Arizona v. Altyn*, 167 Ariz. 191, 805 P.2d 1012 (App. 1990). Bernal and his neighbors the Loekses and McCuskers all own parcels of land that had originally been acquired from the federal government by land patents pursuant to the Small Tract Act, 43 U.S.C.A. §§ 682a through 682e (repealed 1976). Bernal's property is bounded on the east by the north-south trending Cedar Drive. His house faces this roadway, which provides access to his property. The back, west boundary of Bernal's property abuts the east boundary of the Loekses' property which, in turn, is bounded on the north by the McCuskers' property. The Loekses' and McCuskers' properties are bounded on the west by the north-south trending Meridian Road; this roadway provides access to their properties. Bernal's property is bisected by a north-south trending arroyo. He can access the west half of his property by using a foot bridge that spans the wash. However, he would like to keep horses on the west section, access to which can be readily gained only west of the arroyo.

Each of the patents for lots of land from which the parties' parcels were subdivided provides that the patent "is subject to a right-of-way not exceeding 33 feet in width, for roadway and public utilities purposes, to be located along" three of the lot's boundaries. Hence, each of the parties' parcels are subject to a right-of-way along two of its boundaries. These rights-of-way and others in the area form an "H" pattern, with the uprights representing Cedar Drive